

BEFORE THE IOWA REAL ESTATE COMMISSION
1918 S.E. HULSIZER
ANKENY, IOWA

IN RE:)	
)	CASE NUMBER: 89-010
James L. Feller)	
Broker (B06236))	
)	
RFD #1 Box 53)	INFORMAL SETTLEMENT
Preston, Iowa 52069)	
)	

Pursuant to Iowa Code Section 17A.10(1989) and 193E Iowa Administrative Code Section 4.12(117), this Informal Settlement is entered into between James L. Feller and the Iowa Real Estate Commission (Commission). The parties agree as follows:

STIPULATED STATEMENT OF FACTS

1. The Commission has jurisdiction of this matter under Iowa Code Chapters 17A, 117, and 258A(1989) as well as the administrative rules found in Chapter 193E of the Iowa Administrative Code.

2. James L. Feller is, and was at all times during the following events, a licensed real estate broker. His license number is B06236.

3. On January 17, 1989, the trust account records of Broker Feller were examined by Barbara Teymer of the Department of Inspections and Appeals.

4. James L. Feller disbursed his commission prior to closing without the written consent of all parties from the following transactions:

1. Yaddof/Kilburg Est.
2. Miller/Yaddof
3. Haynes/Rathje

5. Broker Feller withheld \$2,225.77 in the trust account after closing on the Manufacturers Hanover/Driscoll transaction without the informed written consent of all the parties.

6. Broker Feller failed to deposit earnest money in a timely manner. \$5,000.00 earnest money of the Horst/Nolting transaction was accepted on December 13, 1988 and deposited on December 20, 1988.

Earnest money of \$350.00 of the Manufacturers Hanover/Larry Driscoll transaction was accepted on December 12, 1988 and deposited December 29, 1988.

7. Broker Feller did not have an interest-bearing checking account from July 1, 1985 to June 5, 1989. Unremitted interest for that period was \$242.89.

8. On June 6, 1989, Broker Feller opened an interest-bearing savings account.

9. Broker Feller has remitted the \$242.89 interest due the State of Iowa for the period of July 1, 1985 to June 5, 1989.

10. Broker Feller has remitted interest to the State of Iowa on a quarterly basis since June of 1989.

11. On June 28, 1990, Broker Feller opened an interest-bearing checking account and he filed a Consent to Examine and Audit Trust Account form with the Iowa Real Estate Commission.

12. 193E Iowa Administrative Code Section 1.27(1) states:

"No funds shall be disbursed from the trust account prior to the closing without the informed written consent of all the parties. In the event of a dispute over the return or forfeiture of any earnest deposit held by a broker, the broker shall continue to hold the deposit in the trust account until a written release is received from all parties consenting to its disposition or until a civil action is filed to determine its disposition at which time payment may be made into court."

13. 193E Iowa Administrative Code Section 1.27(3) states:

"In the event all funds being held by the broker for a transaction cannot be disbursed at the time of closing the broker shall obtain an escrow agreement signed by both parties which shall direct the broker regarding the future disbursements of the funds."

14. Iowa Code Section 117.46 1 states:

"Each real estate broker shall maintain a common trust account in a bank, a savings and loan association, savings bank, or credit union for the deposit of all down payments, earnest money deposits, or other trust funds received by the broker or the broker's salespersons on behalf of the broker's principal, except that a broker acting as a salesperson shall deposit these funds in the common trust account of the broker for whom the broker acts as salesperson. The account shall be an interest-bearing account. The interest on the account shall be transferred quarterly to the treasurer of state and deposited in the title guaranty fund and used for public purposes and the benefit of the public pursuant to section 220.91 unless there is a written agreement between the buyer and seller to the contrary. The broker shall not benefit from interest received on funds of others in the broker's possession."

15. 193E Iowa Administrative Code Section 1.27 1 states:

"1. All money belonging to others and accepted by the broker or the broker's salesperson on the sale, purchase or exchange of real property located in the state of Iowa shall no later than the next banking day after acceptance of the offer be deposited in one or more interest-bearing checking accounts separate from the money belonging to the broker, except for funds deposited to cover bank service charges as specified in Iowa Code Section 117.46. The name of the separate account(s) shall be identified by the word 'trust'."

16. 193E Iowa Administrative Code Section 1.27 2 states:

"2. Unless there is a written agreement between a buyer and a seller to the contrary, the interest on the account shall be transferred quarterly to the state. The beginning of the first quarter is July 1, 1985. The broker may have the depository remit the interest directly, or the broker may remit the interest, but in either case, it will be the responsibility of the broker to see that the interest is remitted. The amount to be remitted to the state will be the net of interest earned less any service charges directly attributable to the requirement of maintaining an interest-bearing account and of remitting the interest to the state. If the interest is remitted by the broker, the broker shall include with the remittance a copy of the applicable bank statement(s)."

17. 193E Iowa Administrative Code Section 4.40(6) a,b,d,j,k states:

"193E 4.40(117) Violations for which civil penalties may be imposed.

4.40(6) Improper trust account and closing procedures:

a. Failing to deposit funds as required.

b. Disbursing trust funds prior to closing without written authorization.

d. Failing to obtain escrow agreement for undisbursed funds.

j. Failing to deposit trust funds in interest-bearing account in accordance with Iowa Code Section 117.46.

k. Failing to account for and remit to the state accrued interest due in accordance with Iowa Code Section 117.46."

AGREED ORDER

By agreement it is therefore ORDERED, ADJUDGED, and DECREED by the Iowa Real Estate Commission as follows:

1. James L. Feller has the right to a hearing on this matter, but waives his right to a hearing and all attendant rights by freely entering into this Informal Settlement.
2. Broker Feller agrees to deposit earnest money timely, no later than the next banking day after acceptance of the offer.
3. Broker Feller agrees that no funds shall be disbursed from the trust account prior to closing without the informed written consent of all the parties.
4. Broker Feller agrees that, if all funds held in the trust account cannot be disbursed at the time of closing, an escrow agreement signed by all parties will be obtained specifying the future disbursement of the funds.
5. Broker Feller erred by failing to maintain an interest-bearing account and by failing to remit the interest or see that the interest was remitted to the State on a quarterly basis. James L. Feller agrees to abide by these provisions in the future.
6. Broker Feller is hereby REPRIMANDED.
7. By authority of 193E Iowa Administrative Code Section 4.40(6) a, b, d, j, k, Broker Feller shall pay a civil penalty of \$500.00. Broker Feller shall deliver a certified check payable to the Iowa Real Estate Commission no later than August 31, 1990 to satisfy this requirement. The certified check must come under a cover letter addressed to the Commission's Executive Secretary and must be referred to as case number 89-010.
8. Broker Feller shall take twelve hours of real estate continuing education in "Trust Account and Closing Procedures". This course must be approved as a "Broker Prelicense Course" [See 193E Iowa Administrative Code 3.2(3)(117)]. These hours shall be in addition to all other real estate continuing education hours required by law for license renewal. The original certificate of attendance for the course must be submitted to the Commission no later than September 30, 1991 as evidence that this requirement has been fulfilled. The certificate of attendance must come under a cover letter addressed to the Commission's Executive Secretary and must be referred to as case number 89-010.
9. This Informal Settlement shall be made part of the permanent record of James L. Feller and shall be considered by the Commission in determining the nature and severity of the disciplinary action to be imposed for any future license law violations by the broker.

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10. Failure to comply with the provisions of this agreed order shall be considered prima facie evidence of a violation of Iowa Code Sections 117.29(3) and 117.34(2)(1989). However, no action may be taken against any licensee without a hearing as provided for in Iowa Code Section 117.35(1989).

11. The within settlement is subject to the approval of the Commission and if the Commission fails to approve this settlement, it shall be of no force or effect on either the Commission or the licensee, and it shall not be admissible for any purposes at any further proceedings in this matter.

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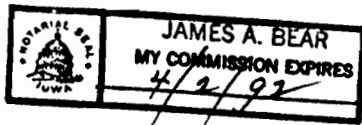
FOR THE BROKER:

Dated this 6th day of August, 1990.

[Redacted Signature]

James L. Feller

Signed and sworn to before me this 6th day of August, 1990.



[Redacted Signature]

Notary Public, State of Iowa

FOR THE COMMISSION:

Signed this 16th day of August, 1990.

[Redacted Signature]

E. Joe Ann Lutz, Chairperson

Executed this 20th day of August, 1990.

[Redacted Signature]

K. Marie Thayer,
Administrator

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by depositing a copy thereof in the U. S. Mail, postage prepaid, in envelopes addressed to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on August 20, 1990

[Redacted Signature]